IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

CALLIE SCOTT GLIDEWELL — PLAINTIFF

V. — NO. 2:99CV256-P-B

HOLLYWOOD CASINO CORPORATION and
HWCC-TUNICA, INC. — DEFENDANTS

MEMORANDUM OPINION

Presently before the Court is defendants' motion for summary judgment [28-1]. The Court, having considered the motion, the response thereto, and the briefs and authorities cited, is prepared to rule. The Court finds as follows, to-wit:

FACTUAL BACKGROUND

The plaintiff, Callie Scott Glidewell, began working for the Hollywood Casino Tunica on May 20, 1996, as Director of Player Development. She reported directly to the General Manager, Domenic Mezzetta. Glidewell alleges that during her employment, she was sexually harassed by Mezzetta and she was discriminated against because of her sex. Additionally, she claims that her termination violated the terms of her written employment agreement and that she was defamed by the company after her termination. Hollywood Casino Tunica maintains that several casino employees had complained about Glidewell's harsh management style, so Glidewell was suspended on January 20, 1998, pending an investigation of these employees' allegations. The casino terminated Glidewell on February 6, 1998, because of her performance and conduct.

SUMMARY JUDGMENT STANDARD

Summary judgment should be entered only if "... there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." Rule 56(c), Federal Rules of Civil

Procedure. The party seeking summary judgment has the initial burden of demonstrating through the evidentiary materials that there is no actual dispute as to any material fact in the case. Celotex Corp. v. Catrett, 477 U.S. 3l7, 323 (l986). On motion for summary judgment, "[t]he inquiry performed is the threshold inquiry of determining whether there is a need for a trial -- whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (l986). In determining whether this burden has been met, the court should view the evidence introduced and all factual inferences from that evidence in the light most favorable to the party opposing the motion. Id. "[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, supra, at 322.

The summary judgment procedure does not authorize trial by affidavit. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict." Anderson v. Liberty Lobby, Inc., supra, at 255. Accordingly, a court may not decide any factual issues found in the record on motion for summary judgment, but if such material issues are present, the court must deny the motion and proceed to trial. Impossible Elec. Tech. v. Wackenhut Protection Systems, 669 F.2d l026, l03l (5 Cir. l982); Environmental Defense Fund v. Marsh, 65l F.2d 983, 99l (5 Cir. l98l); Lighting Fixture & Electric Supply Co. v. Continental Ins. Co., 420 F.2d l2ll, l2l3 (5 Cir. l969).

Under the provisions of Rule 56(e), Federal Rules of Civil Procedure, a party against whom a motion for summary judgment is made may not merely rest upon his pleadings, but must, by affidavit, or other materials as provided in Rule 56, inform the court of specific facts showing that there is a genuine issue for trial. Celotex Corp. v. Catrett, supra, at 324. The facts stated in uncontradicted affidavits or other evidentiary materials must be accepted as true. However, the moving party must still show that he

is entitled to judgment on those facts as a matter of law, and if he fails to discharge that burden he is not entitled to judgment, notwithstanding the apparent absence of a factual issue. 6-Pt. 2, Moore, Federal Practice (2d Ed.), ¶56.22[2], p. 56-777.

LEGAL ANALYSIS

I. Sexual Discrimination

Title VII makes it unlawful for an employer to discriminate, through discharge or other actions "with respect to an [employee's] compensation, terms, conditions, or privileges of employment" based on sex. 42 U.S.C. § 2000e-2 (1994). Ultimately, the question is whether the plaintiff was the victim of intentional discrimination. Reeves v. Sanderson Plumbing Prods. Inc., 530 U.S. 133, 153 (2000). Absent direct evidence of discrimination, a plaintiff must first establish a prima facie case of discrimination. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). If the plaintiff satisfies this burden, then the burden of production shifts to the employer to produce a legitimate, nondiscriminatory reason for the adverse employment action. Burdine v. Texas Dep't of Community Affairs, 450 U.S. 248, 254 (1981). If the employer produces sufficient evidence to support the nondiscriminatory reason for its action, then the plaintiff has an opportunity to prove by a preponderance of the evidence that the employer's proffered reason was a pretext for discrimination. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 506 (1993).

E. Prima Facie Case of Discrimination

To establish a prima facie case of sex discrimination under Title VII, the plaintiff must show that (1) she is a member of a protected class; (2) she was qualified for the position she held; (3) she was discharged from the position; and (4) after being discharged, she was replaced by someone outside of the protected class. Meinecke v. H&R Block of Houston, 66 F.3d 77, 83 (5th Cir. 1995); McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973).

The Court is of the opinion that the first three elements of the prima facie case have been met: Glidewell is a woman (a member of a protected class), who was qualified for the position of Director of Player Development and was later discharged from that position. However, with regard to the fourth

element, the Court has not been presented with any evidence that Glidewell was replaced by a man. In fact, in her deposition, Glidewell admits that she was not replaced right away, but that her position was ultimately filled by Ray Littleton. She goes on to state that "it is not [her] testimony at all" that she was terminated simply to be replaced by a male employee. Glidewell Dep. at 142 (line 14-15).

B. Employer's Legitimate, Non-Discriminatory Reason

Assuming that Glidewell did establish her prima facie case of discrimination, summary judgment is still appropriate if Hollywood Casino Tunica can articulate a legitimate, non-discriminatory reason for its action. According to Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248 (1981), the defendant employer must "clearly set forth, through the introduction of admissible evidence, the reasons for the plaintiff's rejection." Id. at 255. However, the defendant does not need to prove that "it was actually motivated by the proffered reasons." Id. at 254. All that the defendant needs to do is produce evidence that will create a fact issue in order to rebut the plaintiff's prima facie case. Id. at 254-256.

This Court is convinced that Hollywood Casino Tunica has articulated a legitimate non-discriminatory reason for terminating Glidewell. David Rogers, Hollywood Casino Tunica's Vice President for Human Resources, and Dominic Mezzetta, Hollywood Casino Tunica's General Manager, had received several complaints from employees under Glidewell's supervision, claiming that she treated them rudely. According to Rogers' Affidavit, the complaints alleged:

> That Ms. Glidewell openly berated and verbally abused employees under her supervision; that Ms. Glidewell openly criticized the performance of these employees in the presence of other employees; that she made racially derisive remarks about the company's executive receptionist; that she made harsh comments about key management persons at the casino, doing so in the presence of rank and file employees.

Rogers Aff. ¶ 6.

Additionally, Rogers was concerned because of the "difficulty in keeping hosts employed in the Player Development Department because they could not get along with Ms. Glidewell." Id. These complaints and concerns led management to suspend Glidewell pending an investigation of the allegations made against her. Ultimately, Glidewell was terminated as a result of the investigation. In the

Court's opinion, Hollywood Casino Tunica has articulated a legitimate, non-discriminatory reason for Glidewell's termination.

C. Pretext

Even if Hollywood Casino Tunica presents evidence of a legitimate, nondiscriminatory reason for terminating Glidewell, she may still prevail by proving that the proffered basis was merely a pretext for discrimination. Her burden of showing pretext "merges with the ultimate burden of persuading the court that [she] has been the victim of intentional discrimination." See Burdine at 256. However, the evidence and inferences that properly can be drawn from the evidence presented during the plaintiff's prima facie case may be considered in determining whether the defendant's explanation is pretextual. St. Mary's Honor Ctr. v. Hicks, 113 S. Ct. 2742, 2749 (1993).

The Court is not convinced that Glidewell has established that Hollywood Casino Tunica's legitimate non-discriminatory reason for her termination was a pretext for sex discrimination. The Court has reviewed Glidewell's responses to interrogatories, attached by the defendants as an exhibit to the motion for summary judgment, in which she states she was treated differently than male employees. In it, she remarks that she was not initially included in staff meetings or any other business or non-business functions. For instance, several male directors have frequently taken leave to go on golfing trips together. On one occasion, a group of male directors had all gotten company permission to go golfing at Gulf Shores, Alabama. Female directors were not invited. Glidewell, along with the only other female directors, Joanne Rogers and Cassandra Price, went to Dominic Mezzetta, General Manager, and requested permission to take leave in order to go on a shopping trip together. This request was denied. Additionally, she claims that the male directors, officers, and managers treated her with resentment and disrespect.

The plaintiff has not persuaded this Court that she was terminated because of her sex. While

[1]The Court notes that the plaintiff obviously relies solely on her deposition and responses to

she indicates that she was treated differently than male employees[1], she was not paid less than similarly situated males, nor was she denied any sort of promotion because of her sex. Clearly, summary judgment should be granted with regard to Glidewell's sex discrimination claim.

II. Sexual Harassment

Glidewell asserts in her complaint that she was sexually harassed by the General Manager, Domenic Mezzetta, and that this harassment affected the terms of her employment. She claims that he told sexually oriented jokes to her on several occasions, and that she often had to meet with him behind closed doors. In his office, she would often have to help him operate his computer, which caused her to lean over him while she was working on the keyboard. When she would leave his office, he would put his arms on her shoulders and kiss her on the cheek. He also told her that he particularly liked redheads (Glidewell has red hair), and that his ex-wife had been a redhead. At a Sha-Na-Na concert at the casino, Mezzetta allegedly attempted to kiss Glidewell backstage, but she pulled away.

Since Glidewell alleges in her complaint that this alleged sexual harassment "affect[ed] the terms of [her] employment," she is obviously stating a claim for hostile work environment sexual harassment. In order to establish a hostile work environment, Glidewell must allege that the harassment was "sufficiently severe or pervasive to alter the conditions of [her] employment and create an abusive working environment." Meritor Savings Bank FSB v. Vinson, 477 U.S. 57, 67 (1986). To be actionable under Title VII, the harassment must be subjectively and objectively offensive so that a reasonable person would find it hostile or abusive, and the victim must perceive it to be hostile and abusive. Faragher v. City of Boca Raton, 524 U.S. 775, 787 (1998).

To determine whether the alleged conduct is both objectively and subjectively hostile, the Court is directed to consider all the circumstances, "including the frequency of the alleged conduct; its severity;

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interrogatories which were submitted to the Court as exhibits to the defendants' motion for summary judgment. The plaintiff has not submitted any additional documents to the Court which could further support any of her claims.

and whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." DeAngelis v. El Paso Mun. Police Officers Ass'n, 51 F.3d 591, 594 (5th Cir. 1995).

A. Frequency

Glidewell worked at Hollywood Casino Tunica for nearly two years. She claims that Mezzetta told sexually explicit jokes to her "on a number of occasions." Glidewell Dep. at 106 (line 20). She would need to meet with him behind closed doors to discuss business matters with him, and she would have to lean over him in his office to assist him at the computer. Yet Glidewell has not informed the Court how often these incidents would occur. Given the information the Court has before it, these acts of alleged harassment, taken all together over the course of nearly two years, are not so frequent in nature as to create a hostile work environment.

B. Severity

While the Court does not condone telling off-colored jokes and making lewd comments at work, "workplace harassment, even harassment between men and women, is [not] automatically discrimination because of sex merely because the words used have sexual content or connotations." See Oncale v. Sundowner Offshore Servs., 523 U.S. 75, 80 (1998). Furthermore, Glidewell cannot even remember the particulars of any of these jokes. Additionally, the Court must point out that meeting behind closed doors with a supervisor is not uncommon in the workplace. Likewise, the Court is not convinced that Glidewell was faced with sexual harassment when she would lean over to help Mezzetta at his computer.[2] With regard to the incident that took place backstage at the Sha-Na-Na concert, the Court is of the opinion that this incident, while rude, was not so severe as to alter her work environment.

C. Affect on Plaintiff's Employment

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[2]According to her response to interrogatory no. 11, Glidewell asserts "Mr. Mezzetta pretended not to know how to access information. He requested that the plaintiff assist him, which called for her to lean over his desk allowing him to see down her blouse."

Glidewell has not asserted any facts which would indicate that Mezzetta's alleged harassment affected her employment in any way. While she may have felt uncomfortable by his conduct, she continued her work as Director of Player Development. Furthermore, while Glidewell may have encountered some problems working with Mezzetta because of the manner in which he allegedly harassed her at work, she did not suffer any discrimination with regard to her compensation, duties, benefits, or any other term or condition of her employment.

D. Prompt Remedial Action

According to the sexual harassment policy in place at Hollywood Casino Tunica, employees should bring complaints of sexual harassment to David Rogers, Director of Human Resources at Hollywood Casino Tunica, or directly to Steve Byars, Vice President for Human Resources for Hollywood Casino Corporation in Dallas, Texas. The policy encourages employees to report harassing behavior promptly, so that the casino can begin a prompt investigation into the claim.

An employer will be liable for creating a hostile work environment only if an employee can establish that the employer failed to take prompt remedial action after receiving the employee's complaint. Indest v. Freeman Decorating, Inc., 164 F.3d 258, 262-67 (5th Cir. 1999). Glidewell admits that she did not talk to anyone about the harassment, because she says she would have had to report to Mezzetta himself, the alleged harasser.[3] She did talk to David Rogers, the Director of Human Resources at Hollywood Casino Tunica, about general problems, such as problems within her department with certain employees. She also talked to Rogers about problems she had with Mezzetta. She did not inform Rogers of Mezzetta's alleged harassment of her, but rather she complained that she

[3]Glidewell's assumption is incorrect. The policy states that complaints should be made to the immediate supervisor (in Glidewell's case, Mezzetta) *or* the Director of Human Resources (David Rogers).

[4]Glidewell felt uncomfortable with Mezzetta's request that she call him "Father Dom." Glidewell Dep. at 125 (line 6).

"wasn't comfortable" with Mezzetta.[4] In fact, Glidewell did not inform anyone of this alleged harassment until late January, 1998,[5] when she told Rogers that Mezzetta had sexually harassed her. Rogers immediately informed Steve Byars, Vice President for Human Resources for Hollywood Casino Corporation, of the allegations. Rogers and Byars attempted to investigate the harassment claim, but every time they contacted the plaintiff, she refused to meet with them, saying that all communications to her would need to go through her attorney.

Based on the evidence presently before the Court, the Court is of the opinion that Hollywood Casino Tunica has taken steps to investigate and remedy any possible sexual harassment directed toward Glidewell. After Glidewell made a blanket accusation to Rogers that Mezzetta was sexually harassing her, she had little, if any, further contact with Rogers to give him the specifics of her allegation. She merely informed those conducting the investigation that any inquiries needed to go through her attorney. This Court is convinced that the casino did everything in its power to investigate and remedy any harassment. Thus, Hollywood Casino Tunica should not be liable for the alleged harassment.

III. Retaliation

Title VII makes it an "unlawful employment practice for an employer to discriminate against any of his employees . . . because he has opposed any practice made an unlawful employment practice by this subchapter." 42 U.S.C. § 2000e-3(a). In establishing a prima facie case of retaliation, a plaintiff must prove that (1) she engaged in activity protected by Title VII; (2) her employer took adverse employment action against her; and (3) a causal connection exists between the protected activity and the adverse employment action. Mattern v. Eastman Kodak Co., 104 F.3d 702, 705 (5th Cir. 1997). If

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[4]Glidewell felt uncomfortable with Mezzetta's request that she call him "Father Dom." Glidewell Dep. at 125 (line 6).

[5]Glidewell had been suspended on January 20, 1998, pending an investigation of the complaints against her by employees working under her supervision. She informed Rogers of the harassment after she was suspended.

the plaintiff succeeds in proving a prima facie case, the burden then shifts to the employer to articulate some legitimate, non-discriminatory reason for the employment action. Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 256 (1981). Once the employer establishes a legitimate, non-discriminatory reason for its action, the plaintiff must establish that the reason given by the employer was actually a pretext for discrimination. St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

With regard to her prima facie case of retaliation, this Court is not convinced that Glidewell has met even the first prong: that she was engaged in an activity protected by Title VII or that she made a charge, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under Title VII. 42 U.S.C. §2000e-3(a); Oliver v. Sheraton Tunica Corp., 2000 WL 303444 (N.D. Miss. March 8, 2000). The Court notes that Glidewell has not established exactly how the casino retaliated against her. She may be alleging that she was terminated because she made an allegation of sexual harassment. However, this premise ignores the fact that she did not complain to Rogers of the sexual harassment until *after* she was already suspended pending an investigation into her management style. On the other hand, with regard to the second prong of the prima facie case of retaliation, she could be alleging that, after she was terminated, she received unfavorable references from Hollywood Casino Tunica, thus the casino retaliated against her because of her allegations by preventing her employment with other companies. She claims in her deposition that, despite her numerous favorable interviews in the past with various prospective employers, she could not find employment after being terminated from Hollywood Casino Tunica. She assumes that the only reason for this must be that the casino told these prospective employers that she should not be hired. The Court cannot rely on Glidewell's assumption. She has not brought forth any evidence to support her allegation that Hollywood Casino Tunica told these prospective employers not to hire her.

In any event, Hollywood Casino Tunica has established a legitimate, non-discriminatory reason for Glidwell's termination. The Court is convinced that she was terminated as a result of the numerous complaints lodged against her by her subordinates. As such, Glidewell's retaliation complaint should be dismissed.

IV. State Law Claims

Glidewell also claims that her termination was in violation of her contract, and that the defendants defamed her and prevented her from obtaining other employment in the gaming industry by giving false and defamatory job references to prospective employers. As her federal claims have been dismissed, the Court declines to address the Mississippi state law claims of breach of contract and defamation. See 28 U.S.C. § 1367(c); United Mine Workers of America v. Gibbs, 383 U.S. 715 (1966).

CONCLUSION

Based on the foregoing analysis, the Court is of the opinion that the defendant's motion for summary judgment [28-1] should be granted. An order will issue accordingly.

THIS, the 16th day of April, 2001.

W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE